IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3789 of 2003

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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MANOJ TEA TRADERS PVT. LTD. - Petitioner(s)
Versus
JT. CHARITY COMMISSIONER & 1 - Respondent(s)

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Appearance :
MR PC KAVINA for Petitioner(s) : 1,
MR AJ DESAI, AGP for Respondent(s) : 1,
MR DC SEJPAL for Respondent(s) : 2,

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 09/10/2007

ORAL JUDGMENT

1. Heard Mr.P.C. Kavina, learned advocate for the petitioner, Mr.A.J. Desai, learned Assistant Government Pleader for the respondent No.1 and Mr.D.C. Sejpal, learned advocate for the respondent

No.2.

2. By this petition, under Article 226 of the Constitution of India, the petitioner has prayed that the petitioner be permitted to complete the sale of the immovable property in question within any reasonable time which this Court may fix in this behalf.

3. The facts of the case are that the lands bearing City Survey Nos.810 to 826, Ward No.70 of Rajkot admeasuring 8134 sq.mtrs., along with some old super structure were possessed by respondent No.2 Trust. The respondent No.2 was desirous of selling the property to the petitioner and the price of Rs.80.00 lacs was fixed as sale consideration. As the property belonged to a trust registered under the Bombay Public Trusts Act, 1950 ('the Act') permission under Section 36 of the Act had to be obtained from the respondent No.1 – Joint Charity Commissioner. An application No.36/58/99 was filed by the respondent No.2 trust seeking permission to sell the property at the agreed price. By an order dated 4.2.2002, the respondent No.1 granted permission to the respondent No.2 to sell the immovable property described hereinabove to the petitioner, for a total sale consideration of Rs.91.00 lacs, subject to certain conditions. Under condition No.6 of the said order, the permission would enure for a period of six months from the date of the order. It appears that, due to certain

outstanding disputes between petitioner and the respondent No.2, the sale deed could not be completed within six months as provided in the order. The petitioner, therefore, preferred Misc. Application in Original Application No.36/58/99 seeking extension of the time limit stipulated in the order dated 4.2.2002 passed by the respondent No.1.

4. By an order dated 21.2.2003 the respondent No.1 declined to extend the time limit and rejected the application of the petitioner, which has given rise to the present petition.

5. Notice had been issued in this matter on 9.4.2003 and was made returnable on 22.4.2003. Thereafter by an order dated 26.7.2004, the Charity Commissioner was directed to place on record the details regarding approximate market value of the property. It was also observed that the Charity Commissioner may also place on record the “jantri” valuation made by the State Government of the land in question.

6. In compliance with the directions issued vide the aforesaid order, the Charity Commissioner had placed on record a valuation report made by a Government approved valuer along with a further affidavit dated 21st September, 2004. An extract of the jantri was also annexed with the said affidavit.

7. On 10.12.2004, Rule was issued in the matter

and interim relief was granted in the following terms:

> “By way of interim relief, it is directed that the respondent Trust shall execute a sale deed on or before 31st January, 2005. Today, the petitioner has handed over a Demand Draft of Rs.12,05,000=00 (Rs. Twelve lakhs and Five Thousand only), being Cheque No.869669 dated 09/12/2004 of H.D.F.C. Bank, Mumbai Branch, Mumbai to Mr. Sejpal learned advocate for respondent no.2 and the same shall be encashed by the Trustees. The copy of the said D.D. is ordered to be taken on the record.
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> The balance amount as approved by the Charity Commissioner, shall be paid at the time of execution of sale deed.
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> Further the amount of costs, i.e. for the fees of the valuer, shall be paid after the execution of the sale deed.”

8. Subsequently the petitioner has filed an affidavit dated 27.1.2005 stating that pursuant to the aforesaid order dated 10.12.2004, the sale deed has been executed on 19.1.2005 and the same has been registered with the Sub Registrar, Rajkot on the same day. A copy of the sale deed is produced with the affidavit. It is further averred that the petitioner

has paid full and final amount as approved by the Charity Commissioner, at the time of execution of the sale deed.

9. From the facts noted above, it is apparent that, by virtue of the aforesaid interim order dated 10.12.2004, the petition stood virtually allowed. Pursuant to the interim order, the sale of the immovable property has been completed as prayed for by the petitioner. In the circumstances, nothing remains to be done in the petition as the grievance of the petitioner no longer survives. This position is not disputed by any of the learned advocate for the respective parties.

10. For the foregoing reasons, the petition succeeds and is accordingly allowed. Rule is made absolute accordingly, with no order as to costs.

11. Needless to state that, pursuant to the sale deed dated 19.1.2005 in respect of the property in question, the Charity Commissioner shall make an appropriate note in the PTR Register recording the transfer of the property in question from the trust to the petitioner.

(HARSHA DEVANI, J.)

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